

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:

City of Chesapeake
306 Cedar Road
Chesapeake, VA 23328

Findings of Violation

**ADMINISTRATIVE ORDER
ON CONSENT**

Docket No. CWA-03-2017-0194

2017 SEP -7 AM 9:16

I. STATUTORY AND REGULATORY BACKGROUND

1. EPA has made the following findings of fact and issues this Administrative Order on Consent (Consent Order) pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) under Section 309(a) of the Clean Water Act (CWA or Act), 33 U.S.C. § 1319(a). This authority has been delegated by the Administrator to the Regional Administrator of EPA Region III, and further delegated to the Director, Water Protection Division, Region III.

2. Section 309 of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to him the Administrator finds that any person is in violation of any permit condition or limitation implementing certain CWA sections in a permit issued under Section 402 of the Act, 33 U.S.C. § 1342, he shall issue an Order requiring such person to comply with such section or requirement.

3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.

4. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point

sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.

5. “Discharge of a pollutant” includes “any addition of any pollutant or combination of pollutants to waters of the United States from any point source.” 40 C.F.R. § 122.2.

6. “Storm water” is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).

7. The term “municipal separate storm sewer system” (“MS4”) includes, “a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.” 40 C.F.R. § 122.26(b)(8)(i).

III. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS AND CONCLUSIONS OF LAW

10. The City of Chesapeake, Virginia (“Respondent” or “Chesapeake”) is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

11. Respondent owns and operates a MS4 located in the City of Chesapeake, VA.

12. Chesapeake was issued a Virginia Pollution Discharge Elimination System Permit, VA0088625 (the “MS4 Permit”) which regulates discharges from Chesapeake’s MS4 by the Virginia Department of Environmental Quality (“VA DEQ”). The MS4 Permit has an effective date of March 8, 2001 and an expiration date of April 10, 2006. Chesapeake was operating under the 2001 permit at the time of the 2015 inspection as a new permit had not been issued and the 2001 permit was administratively extended.

13. As part of its application for an MS4 permit, Chesapeake developed a Storm Water Management Program (the “MS4 Plan”) pursuant to 40 C.F.R. 122.26(d)(2)(iv)(A)(2), which requires “A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment.

14. The City of Chesapeake encompasses a total area of approximately 340 square miles. According to the 2010 Census, its population is estimated at 222,209 people.

15. The City of Chesapeake is located in southeastern Virginia and is bordered by York County, the cities of Norfolk, Suffolk and Virginia Beach.

16. Respondent's MS4 discharges storm water to the James River and Chesapeake Bay Watersheds as well as the Chowan River and the Great Dismal Swamp (Albemarle). The James River and Chesapeake Bay are "waters of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

17. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Commonwealth of Virginia to issue NPDES permits in 1975.

18. On January 20, 2015, duly-authorized EPA representatives and their contractors conducted an inspection of Respondent's MS4 program ("the 2015 MS4 Inspection").

19. During the 2015 MS4 Inspection, EPA representatives identified a couple of potential violations of the 2001 Permit and the CWA as described below.

20. A copy of the inspection report was received by the City of Chesapeake on December 17, 2015.

Count I: Failure to Conduct Erosion and Sediment Control Inspections at Construction Sites

21. Section A.6 of the Standard Operating Procedures (SOP) for Erosion and Sediment Control Inspection and Enforcement states "The Stormwater Inspector will conduct routine inspections of the lots within activated subdivisions and complete Part I of the form at least once every two (2) weeks and within 48 hours of runoff producing storm events ...". The SOP was developed by the city to meet Part I.A.1.d of the 2001 permit which requires the City to have "A program to continue implementation and maintenance of the structural and nonstructural best management practices to reduce pollutants in Stormwater runoff from construction sites."

22. At the time of inspection, the EPA inspection team reviewed the inspection frequency for 10 construction projects. The dataset was provided to EPA by the City and revealed that at 9 of the 10 projects the time between inspections exceeded 14-days at least once.

23. Respondent's failure to inspect all construction sites within the time frame established by the SOP represents a violation of the permit and Section 301 of the Act, 33 U.S.C. § 1311.

III. ORDER

AND NOW, this 7th day of September, 2017, pursuant to section 309(a) of the Act, 33 U.S.C. § 1319(a), having taken into account the seriousness of the violations and any good faith efforts by Respondent to comply with section 301(a) of the Act, Respondent is hereby ORDERED, pursuant to Section 309(a) to do the following:

24. Respondent shall take all actions necessary to comply with its MS4 Permit, including those agreed upon during negotiations with EPA:

- a. Provide EPA with a list of all municipal facilities now identified as "High Risk" facilities (If the draft list previously submitted by the City changes, the City shall submit its final list to the EPA pursuant to paragraph 25 by December 31, 2017.);
- b. Document that municipal employees are informed of the dedicated vehicle wash rack and that municipal vehicles are sent to only this wash rack (or like facilities) for cleaning; and,
- c. Implement an approach to meet the Erosion and Sediment Control Inspection schedule consistent with the requirements of the 2016 MS4 Permit, which may include seeking approval of an alternate inspection schedule from the VA DEQ as allowed by Virginia regulations within a reasonable time of the hiring of a Construction Inspector Supervisor.

25. All documents required by Paragraph 24 of this Order have been previously submitted, except as noted above, and any further submittals, if any, shall be submitted with a certification statement signed by a responsible municipal officer, as defined in 40 CFR § 122.22(d), that reads as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signed _____
Title _____

Shall be submitted to:

Peter Gold
Enforcement Officer
NPDES Enforcement Branch
Mail Code (3WP42)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

IV. GENERAL PROVISIONS

26. Issuance of this Consent Order is intended to address the violations described herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Further, EPA reserves any existing rights and remedies available to it under the CWA, 33 U.S.C. §1311, et seq., the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction. Further, EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Consent Order, following its effective date (as defined below).

27. This Order does not constitute a waiver or modification of the terms or conditions of the Respondent's MS4 permit. Compliance with the terms and conditions of this Order does not relieve Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.

28. For the purposes of this proceeding, the Respondent neither admits nor denies the factual allegations and conclusions of law set forth in this Order.

29. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

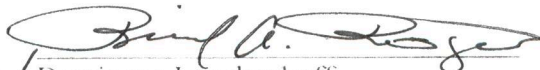
30. By entering into this Order, the Respondent does not admit any liability for the civil claims alleged herein.

V. EFFECTIVE DATE

This ORDER is effective after receipt by Respondent of a fully executed document.

SO ORDERED:

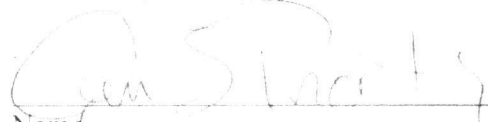
Date: _____

Joy 
Dominique Lueckenhoff
Acting Director, Water Protection Division
U.S. EPA Region III

AGREED TO:

For the City of Chesapeake:

Date: 8-17-17


Name
City Attorney
Title

APPROVED AS TO FORM

